



Domestic Security Committee

**Wednesday, March 22, 2006
2:30 P.M. – 4:00 P.M.
12 House Office Building**

**Rep. Sandy Adams
Chair**

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Speaker Allan G. Bense

Domestic Security Committee

Start Date and Time: Wednesday, March 22, 2006 02:30 pm

End Date and Time: Wednesday, March 22, 2006 04:00 pm

Location: 12 HOB

Duration: 1.50 hrs

Consideration of the following bill(s):

HB 737 Tax Benefits Related to Catastrophic Emergencies by Grant
HB 807 Criminal Acts Committed During a State of Emergency by Benson
HB 911 Department of Management Services by Bullard

NOTICE FINALIZED on 03/20/2006 16:03 by LOVE.JOHN

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 737

Tax Benefits Related to Catastrophic Emergencies

SPONSOR(S): Grant

TIED BILLS:

IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Domestic Security Committee		Wiggins <i>JW</i>	Newton <i>JD</i>
2) Local Government Council			
3) Finance & Tax Committee			
4) State Administration Council			
5)			

SUMMARY ANALYSIS

The bill provides additional definition of the term "infrastructure", allowing local governments the authority to expend proceeds from the Local Government Infrastructure Surtax for private entity facilities that are used, when needed, as public emergency shelters. The bill also provides an exemption from the Transient Rentals Tax for displaced persons seeking temporary housing due to an emergency or a major catastrophic disaster.

The bill amends s. 212.055 F.S. and s. 212.03 F.S.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Maintain public security- The bill allows local government to expend the proceeds from the Local Government Infrastructure Surtax for private facilities to be utilized for the purposes of emergency public shelter needs; thus preserving the public's safety.

B. EFFECT OF PROPOSED CHANGES:

Present situation:

Local Government Infrastructure Surtax- Local governments are sanctioned to levy different types of local discretionary sales surtaxes pursuant to s. 212.055, F. S. The Local Government Infrastructure Surtax is one local tax that is utilized and may be levied at .5 percent or 1 percent. The proceeds of the tax may be expended within a county or municipalities within a county or by negotiated joint county agreement within another county to finance, plan, and construct infrastructure, to acquire land for public recreation or conservation or protection of natural resources, or to finance the closure of county-owned or municipality owned solid waste landfills.¹

As currently defined by the section, infrastructure means any fixed capital expenditure or fixed capital outlay associated with the construction, reconstruction, or improvement of public facilities which have a life expectancy of 5 or more years and any land acquisition, land improvement, design, and related engineering costs.²

Section 212.03 F. S. provides for a sales tax of 6 percent on the business of renting, leasing, or granting a license to use any living quarters or sleeping or housekeeping accommodation in connection with any hotel, apartment house, rooming house, or tourist or trailer camp. The statute provides an exemption when a period of continuous residence is longer than 6 months.³

The Department of Community Affairs Division of Emergency Management's 2005 *Shelter Retrofit Report* highlights the deficit of safe public emergency shelter space. While significant progress has reduced the deficit of spaces meeting the American Red Cross standard ARC 4496, the report projects a need of almost 1.3 million public shelter spaces in 2006. The department estimates Florida will have 816,778 spaces meeting the public standard by the 2006 hurricane season.⁴ According to the report, under current shelter retrofit and building programs, Florida is projected to meet its estimated emergency public shelter needs by 2011.

Proposed situation:

Section 1 amends 212.055, F. S., to define the term "infrastructure" and further define the term "public facilities." Under the bill, public facilities can include private facilities temporarily used by local government as emergency public shelters or a staging area for emergency response equipment.

Under this broadened definition of "public facilities", local governments will be allowed to expend Local Government Infrastructure Surtax revenue on privately owned facilities to be used as temporary emergency public shelters and for a staging area for emergency response equipment. Additionally, the surtax revenue could be used for economic development purposes with private business so long as the

¹ S.212.055 (d)(1.) F.S.

² S. 212.055(2) (a) F.S.

³ S. 212.03 (1)F.S.

⁴ Department of Community Affairs, 2006 Shelter Retrofit Report, September, 2005.

building project meets public emergency shelter standards. These capital improvements may result in private buildings being better able to withstand hurricane force winds and other related threats to building safety.

Section 2 amends 212.03, F. S., to provide an exemption from the Transient Rentals Tax for a person who rents, leases, lets, or grants a license to use, occupy or enter transient living accommodations covered by the section to an individual who has been displaced from his or her usual living quarters by a hurricane or other catastrophic disaster. The Department of Revenue is charged with creating a rule, defining acceptable "proof", that is submitted to a landlord proving that the disaster is the legitimate cause of the individual's need for temporary housing.

C. SECTION DIRECTORY:

Section 1. Defines the term public facilities used on a temporary basis to provide emergency public shelters to local government agencies.

Section 2. Describes the exemption from the Transient Rentals Tax for displaced persons seeking temporary housing because of a hurricane and or a major catastrophic disaster.

Section 3. Provides for an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The impact of the exemption on Transient Rentals Revenue is (18.2) million to the General Revenue fund (2006-2007), according to the Revenue Estimating Impact Conference dated March 9, 2006.⁵

Local governments will be given expanded authority to expend surtax proceeds. Use of such funds would be intended to aid in reducing the current deficit of suitable emergency public shelters.

2. Expenditures:

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Private sector businesses that agree to allow their buildings to be used as needed, during a disaster, may seek Local Government Infrastructure Surtax funds to offset capital development costs. Local building owners may contract with local construction and engineering entities to perform these capitol

improvements for a profit. Additionally, by broadening the term of "public facilities" privately owned and publicly owned entities may be competing for the same pool of money for capital improvements. If a county decides that providing adequate shelter space is a priority, than the Local Government Infrastructure Surtax could be utilized for capital improvements on privately owned emergency shelters before those monies would be eligible for other public infrastructure projects. Individuals who are displaced from their residence as a result of a hurricane or catastrophic event will be eligible for a tax exemption. As a result, there will most likely be a reduction in the amount of Transient Rentals Tax that is collected and reported by landlords. Landlords will also have to spend additional staff time to verify which individuals are eligible for the exemption.

D. FISCAL COMMENTS:

The bill will reduce the revenue potential from the Transient Rental Tax as outlined in s. 212.054 and 212.055., F.S.⁶

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill may fall under subsection (b) of 2. 18 of Article VII, Florida Constitution. Subsection (b) that requires a two-thirds vote of the membership of each chamber in order to enact a general law reducing the authority that municipalities and counties had on February 1, 1989, to raise revenue in the aggregate. By adding an exemption to the state sales tax, the bill has the effect of adding an exemption to the local option county sales surtax. Since there may be a qualifying anticipated annual local revenue loss from the Transient Rentals Tax, the bill may not be exempt from the requirements of subsection (b). Final determination would be made pending an impact review by the Revenue Estimating Impact Conference.

2. Other:

B. RULE-MAKING AUTHORITY:

The Department of Revenue is charged with creating a rule, defining acceptable "proof", that is submitted to a landlord proving that the disaster is the legitimate cause of the individual's need for temporary housing.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

⁶ Revenue Estimating Conference, HB 737, 3/9/06
STORAGE NAME: h0737.DS.doc
DATE: 3/20/2006

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1 A bill to be entitled
 2 An act relating to tax benefits related to catastrophic
 3 emergencies; amending s. 212.055, F.S.; defining the term
 4 "public facilities" to include certain private facilities
 5 used as public shelters or staging areas for emergency
 6 response equipment during emergencies declared by the
 7 state or local government; including such facilities as
 8 infrastructure that may be financed through the local
 9 government infrastructure surtax; amending s. 212.03,
 10 F.S.; providing that the temporary rental or lease of
 11 residential quarters to individuals who have been
 12 displaced by a hurricane or other catastrophic disaster is
 13 not subject to the transient rentals tax under this
 14 section; providing for rulemaking by the Department of
 15 Revenue; providing an effective date.

16
 17 Be It Enacted by the Legislature of the State of Florida:

18
 19 Section 1. Paragraph (d) of subsection (2) of section
 20 212.055, Florida Statutes, is amended to read.

21 212.055 Discretionary sales surtaxes; legislative intent;
 22 authorization and use of proceeds.--It is the legislative intent
 23 that any authorization for imposition of a discretionary sales
 24 surtax shall be published in the Florida Statutes as a
 25 subsection of this section, irrespective of the duration of the
 26 levy. Each enactment shall specify the types of counties
 27 authorized to levy; the rate or rates which may be imposed; the
 28 maximum length of time the surtax may be imposed, if any; the

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procedure which must be followed to secure voter approval, if required; the purpose for which the proceeds may be expended; and such other requirements as the Legislature may provide. Taxable transactions and administrative procedures shall be as provided in s. 212.054.

(2) LOCAL GOVERNMENT INFRASTRUCTURE SURTAX.--

(d)1. The proceeds of the surtax authorized by this subsection and any interest accrued thereto shall be expended by the school district or within the county and municipalities within the county, or, in the case of a negotiated joint county agreement, within another county, to finance, plan, and construct infrastructure and to acquire land for public recreation or conservation or protection of natural resources and to finance the closure of county-owned or municipally owned solid waste landfills that are already closed or are required to close by order of the Department of Environmental Protection. Any use of such proceeds or interest for purposes of landfill closure prior to July 1, 1993, is ratified. Neither the proceeds nor any interest accrued thereto shall be used for operational expenses of any infrastructure, except that any county with a population of less than 75,000 that is required to close a landfill by order of the Department of Environmental Protection may use the proceeds or any interest accrued thereto for long-term maintenance costs associated with landfill closure. Counties, as defined in s. 125.011(1), and charter counties may, in addition, use the proceeds and any interest accrued thereto to retire or service indebtedness incurred for bonds issued prior to July 1, 1987, for infrastructure purposes, and for

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bonds subsequently issued to refund such bonds. Any use of such proceeds or interest for purposes of retiring or servicing indebtedness incurred for such refunding bonds prior to July 1, 1999, is ratified.

2. For the purposes of this paragraph, the term "infrastructure" means:

a. Any fixed capital expenditure or fixed capital outlay associated with the construction, reconstruction, or improvement of public facilities that ~~which~~ have a life expectancy of 5 or more years and any land acquisition, land improvement, design, and engineering costs related thereto. As used in this sub-subparagraph, the term "public facilities" includes private facilities used on a temporary basis from time to time by a local government as an emergency public shelter or a staging area for emergency response equipment during an emergency officially declared by the state or by the local government under s. 252.38.

b. A fire department vehicle, an emergency medical service vehicle, a sheriff's office vehicle, a police department vehicle, or any other vehicle, and such equipment necessary to outfit the vehicle for its official use or equipment that has a life expectancy of at least 5 years.

c. Any expenditure for the construction, lease, or maintenance of, or provision of utilities or security for, facilities as defined in s. 29.008.

3. Notwithstanding any other provision of this subsection, a discretionary sales surtax imposed or extended after the effective date of this act may provide for an amount not to

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exceed 15 percent of the local option sales surtax proceeds to be allocated for deposit to a trust fund within the county's accounts created for the purpose of funding economic development projects of a general public purpose targeted to improve local economies, including the funding of operational costs and incentives related to such economic development. The ballot statement must indicate the intention to make an allocation under the authority of this subparagraph.

Section 2. Subsection (1) of section 212.03, Florida Statutes, is amended to read:

212.03 Transient rentals tax; rate, procedure, enforcement, exemptions.--

(1) It is hereby declared to be the legislative intent that every person is exercising a taxable privilege who engages in the business of renting, leasing, letting, or granting a license to use any living quarters or sleeping or housekeeping accommodations in, from, or a part of, or in connection with any hotel, apartment house, roominghouse, or tourist or trailer camp. However, any person who rents, leases, lets, or grants a license to others to use, occupy, or enter upon any living quarters or sleeping or housekeeping accommodations in apartment houses, roominghouses, tourist camps, or trailer camps, and who exclusively enters into a bona fide written agreement for continuous residence for longer than 6 months in duration at such property is not exercising a taxable privilege. Moreover, a person who rents, leases, lets, or grants a license to use, occupy, or enter upon any living quarters or sleeping or housekeeping accommodations in apartment houses, roominghouses,

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113 tourist camps, or trailer camps to an individual who has been
114 displaced from his or her usual housing due to a hurricane or
115 other catastrophic disaster is not exercising a taxable
116 privilege if the displaced individual provides to his or her
117 landlord such proof as the Department of Revenue requires, by
118 rule, that such a catastrophe is the cause of the individual's
119 need for temporary housing. For the exercise of such taxable
120 privilege, a tax is hereby levied in an amount equal to 6
121 percent of and on the total rental charged for such living
122 quarters or sleeping or housekeeping accommodations by the
123 person charging or collecting the rental. Such tax shall apply
124 to hotels, apartment houses, roominghouses, or tourist or
125 trailer camps whether or not there is in connection with any of
126 the same any dining rooms, cafes, or other places where meals or
127 lunches are sold or served to guests.

128 Section 3. This act shall take effect July 1, 2006.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

(d)1. The proceeds of the surtax authorized by this subsection and any interest accrued thereto shall be expended by the school district or within the county and municipalities within the county, or, in the case of a negotiated joint county agreement, within another county, to finance, plan, and construct infrastructure and to acquire land for public recreation or conservation or protection of natural resources and to finance the closure of county-owned or municipally owned solid waste landfills that are already closed or are required to close by order of the Department of Environmental Protection. Any use of such proceeds or interest for purposes of landfill closure prior to July 1, 1993, is ratified. Neither the proceeds nor any interest accrued thereto shall be used for operational expenses of any infrastructure, except that any county with a population of less than 75,000 that is required to close a landfill by order of the Department of Environmental Protection may use the proceeds or any interest accrued thereto for long-term maintenance costs associated with landfill closure. Counties, as defined in s. 125.011(1), and charter counties may, in addition, use the proceeds and any interest accrued thereto to retire or service indebtedness incurred for bonds issued prior to July 1, 1987, for infrastructure purposes, and for bonds subsequently issued to refund such bonds. Any use of such proceeds or interest for purposes of retiring or servicing indebtedness incurred for such refunding bonds prior to July 1, 1999, is ratified.

2. For the purposes of this paragraph, the term "infrastructure" means:

a. Any fixed capital expenditure or fixed capital outlay associated with the construction, reconstruction, or improvement of public facilities that which have a life expectancy of 5 or

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

54 more years and any land acquisition, land improvement, design,
55 and engineering costs related thereto.

56 b. A fire department vehicle, an emergency medical service
57 vehicle, a sheriff's office vehicle, a police department
58 vehicle, or any other vehicle, and such equipment necessary to
59 outfit the vehicle for its official use or equipment that has a
60 life expectancy of at least 5 years.

61 c. Any expenditure for the construction, lease, or
62 maintenance of, or provision of utilities or security for,
63 facilities as defined in s. 29.008.

64 d. Any fixed capital expenditure or fixed capital outlay
65 associated with the improvement of private facilities that have
66 a life expectancy of 5 or more years and that the owner agrees
67 to make available for use on a temporary basis as needed by a
68 local government as a public emergency shelter or a staging area
69 for emergency response equipment during an emergency officially
70 declared by the state or by the local government under s.
71 252.38. Such improvements under this subsection are limited to
72 those necessary to comply with current standards for public
73 emergency evacuation shelters. The owner shall enter into a
74 written contract with the local government providing the
75 improvement funding to make such private facility available to
76 the public for purposes of emergency shelter at no cost to the
77 local government for a minimum period of 10 years after
78 completion of the improvement, with the provision that such
79 obligation will transfer to any subsequent owner until the end
80 of the minimum period.

81 3. Notwithstanding any other provision of this subsection,
82 a discretionary sales surtax imposed or extended after the
83 effective date of this act may provide for an amount not to
84 exceed 15 percent of the local option sales surtax proceeds to

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

85 be allocated for deposit to a trust fund within the county's
86 accounts created for the purpose of funding economic development
87 projects of a general public purpose targeted to improve local
88 economies, including the funding of operational costs and
89 incentives related to such economic development. The ballot
90 statement must indicate the intention to make an allocation
91 under the authority of this subparagraph.

92 Section 2. This act shall take effect July 1, 2006.

93
94 ===== T I T L E A M E N D M E N T =====

95 Remove the entire title and insert:

96 An act relating to tax benefits related to catastrophic
97 emergencies; amending s. 212.055, F.S.; including as
98 infrastructure any fixed capital expenditure or fixed capital
99 outlay associated with the improvement of certain private
100 facilities that the owner agrees to make available as a public
101 emergency shelter or staging area for emergency response
102 equipment during emergencies declared by the state or local
103 government; requiring that improvements be limited to those
104 necessary to meet current standards for public emergency
105 evacuation shelters; requiring the owner to enter into a written
106 contract with the local government providing improvement
107 funding; providing an effective date.
108

HOUSE OF REPRESENTATIVES STAFF ANALYSIS



BILL #: HB 807

Criminal Acts Committed During a State of Emergency

SPONSOR(S): Benson and others

TIED BILLS:

IDEN./SIM. BILLS: SB 1746

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Criminal Justice Committee	5 Y, 0 N	Ferguson	Kramer
2) Domestic Security Committee		Newton 	Newton 
3) Criminal Justice Appropriations Committee			
4) Justice Council			
5) _____			

SUMMARY ANALYSIS

This bill increases the penalties for burglary and theft when the offender commits such crimes after a state of emergency is declared by the Governor, such crimes are committed within the county subject to the state of emergency, and the perpetration of such crimes are facilitated by conditions arising from the emergency. This bill defines the term "conditions arising from the emergency." This bill also provides that a person arrested for committing such an offense may not be released until they appear before a committing magistrate at a first-appearance hearing.

This bill provides an effect date of July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government -- This bill increases criminal penalties for certain acts committed during a state of emergency.

Promote personal responsibility -- This bill seeks to deter wrongful conduct by increasing criminal penalties for certain acts committed after a state of emergency.

B. EFFECT OF PROPOSED CHANGES:

Background

Looting is a common term that applies to crimes such as burglary and theft that occur during a riot or civil emergency. Florida law does not have a separate crime for looting. Looting crimes are prosecuted under criminal laws prohibiting burglary¹ and theft.²

Chapter 252 regulates the Governor's powers and duties during an emergency. Section 252.36(2), F.S., provides that the Governor must issue an executive order or proclamation if an emergency has occurred or is imminent. The Governor's powers during an emergency are broad.

The Criminal Punishment Code applies to sentencing for felony offenses committed on or after October 1, 1998. A defendant's sentence is calculated based on points assigned for factors including: the offense for which the defendant is being sentenced; the injury to the victim; additional offenses that the defendant committed at the time of the primary offense; the defendant's prior record and other aggravating factors. Offenses are ranked in the "offense severity ranking chart" from level one (least severe) to level ten (most severe) and are assigned points based on the severity of the offense as determined by the legislature. The points are added in order to determine the "lowest permissible sentence" for the offense. This is the minimum sentence that a judge may impose. The permissible sentence for an offense ranges from the calculated lowest permissible sentence to the statutory maximum for the primary offense. The statutory maximum sentence for a first degree felony is thirty years, for a second degree felony is fifteen years and for a third degree felony is five years. s. 775.082, F.S.

2005 Legislative Actions

HB 207 was introduced in 2005 and passed favorably through the House and Senate. HB 207 increased criminal penalties for burglary and theft acts committed within an area that is subject to a state of emergency. However, HB 207 was vetoed on June 2, 2005³ because of concerns with the scope of the bill being overly broad. As the Governor explained in his veto message:

The enhanced penalties would have application beyond just looting in the days following a disaster. The consequences of this wording are sweeping, considering that states of emergency can last for months following a disaster. Although this bill is well intended, it creates a significant unintended consequence, therefore: enhanced penalties for looting would carry on long beyond the existence of a disaster-induced "looting" scenario.

Effect of Bill

¹ Section 810.02, F.S.

² Section 812.014, F.S.

³ See http://eogtmp.sto.fl.gov/html/2005_legislative_actions.html

This bill increases the penalties for burglary and theft when the offender commits such crimes after a state of emergency is declared by the Governor, such crimes are committed within the county subject to the state of emergency, and the perpetration of such crimes are facilitated by conditions arising from the emergency. The term "conditions arising from the emergency", as defined by this bill, means civil unrest, power outages, curfews, voluntary or mandatory evacuations, or a reduction in the presence of or the response time for first responders or homeland security personnel.

This bill appears to address the concerns of the veto message for HB 207 since it narrows the scope to burglary and theft offenses committed after a state of emergency is declared, within the county subject to the state of emergency, and only when the commission of the offense is facilitated by conditions arising from the emergency as defined by the bill.

This bill also requires that a person arrested for burglary or theft during a state of emergency must be held until the person appears before a committing magistrate at a first appearance hearing pursuant to rule 3.130 Crim. Pro.

The following chart summarizes all of the offenses reclassified by this bill and the increased ranking:

Looting Offenses		Reclassification if committed during a state of emergency
Description of Offense	Current Penalty	
Burglary of a dwelling, whether occupied or not, if the offender does not make an assault or battery, and the offender is not and does not become armed with a dangerous weapon or explosive. ss. 810.02(3)(a)-(b), F.S.	2nd degree felony, Level 7	1st degree felony, Level 8
Burglary of an occupied structure if the offender does not make an assault or battery, and the offender is not and does not become armed with a dangerous weapon or explosive. s. 810.02(3)(c), F.S.	2nd degree felony, Level 6	1st degree felony, Level 7
Burglary of an occupied conveyance if the offender does not make an assault or battery, and the offender is not and does not become armed with a dangerous weapon or explosive. s. 810.02(3)(d), F.S.	2nd degree felony, Level 7	1st degree felony, Level 8
Burglary of an unoccupied structure if the offender does not make an assault or battery, and the offender is not and does not become armed with a dangerous weapon or explosive. s. 810.02(4)(a), F.S.	3rd degree felony, Level 4	2nd degree felony, Level 5
Burglary of an unoccupied conveyance if the offender does not make an assault or battery, and the offender is not and does not become armed with a dangerous weapon or explosive. s. 810.02(4)(b), F.S.	3rd degree felony, Level 4	2nd degree felony, Level 5
Theft of property valued between \$20,000 and \$100,000. s. 812.014(2)(b)1., F.S.	2nd degree felony, Level 6	1st degree felony, Level 7
Theft of cargo that has entered the stream of commerce and is valued less than \$50,000. s. 812.014(2)(b)2., F.S.	2nd degree felony, Level 7	1st degree felony, Level 8
Theft of certain emergency medical equipment valued in excess of \$300. s. 812.014(2)(b)3., F.S.	2nd degree felony, Level 7	1st degree felony, Level 8
Theft of property valued between \$10,000 and \$20,000. s. 812.014(2)(c)3., F.S.	3rd degree felony, Level 4	2nd degree felony, Level 5
Theft of property valued between \$5,000 and \$10,000. s. 812.014(2)(c)2., F.S.	3rd degree felony, Level 3	2nd degree felony, Level 4

C. SECTION DIRECTORY:

Section 1 amends s. 810.02, F.S., reclassifying certain burglary offenses committed during a state of emergency.

Section 2 amends s. 812.014, F.S., reclassifying certain theft offenses committed during a state of emergency.

Section 3 provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Criminal Justice Estimating Conference (CJEC) met February 28, 2006 to determine the fiscal impact of this bill; however, the consideration of the bill was temporarily postponed in order to collect additional data.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Provisions requiring a person to be held pending first appearance may increase local government expenditures due to increased jail bed utilization.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

If provisions of the bill requiring offenders to be held pending first appearance increases jail bed utilization, the bill would require counties to expend funds. Even if the required expenditures were determined to be significant, the bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

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1 A bill to be entitled
2 An act relating to criminal acts committed during a state
3 of emergency; amending s. 810.02, F.S.; providing enhanced
4 penalties for specified burglaries that are committed
5 during, and facilitated by specified conditions arising
6 from, a state of emergency declared by the Governor;
7 prohibiting the release of a person arrested for
8 committing a burglary during such a state of emergency
9 until that person appears before a magistrate at a first-
10 appearance hearing; requiring that a felony burglary
11 committed during a state of emergency be reclassified one
12 level above the current ranking of the offense committed;
13 amending s. 812.014, F.S.; providing enhanced penalties
14 for the theft of certain property stolen during, and
15 facilitated by specified conditions arising from, a state
16 of emergency declared by the Governor; requiring that a
17 felony theft committed during a state of emergency be
18 reclassified one level above the current ranking of the
19 offense committed; providing an effective date.

20
21 Be It Enacted by the Legislature of the State of Florida:

22
23 Section 1. Subsections (3) and (4) of section 810.02,
24 Florida Statutes, are amended to read:

25 810.02 Burglary.--

26 (3) Burglary is a felony of the second degree, punishable
27 as provided in s. 775.082, s. 775.083, or s. 775.084, if, in the
28 course of committing the offense, the offender does not make an

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assault or battery and is not and does not become armed with a dangerous weapon or explosive, and the offender enters or remains in a:

(a) Dwelling, and there is another person in the dwelling at the time the offender enters or remains;

(b) Dwelling, and there is not another person in the dwelling at the time the offender enters or remains;

(c) Structure, and there is another person in the structure at the time the offender enters or remains; or

(d) Conveyance, and there is another person in the conveyance at the time the offender enters or remains.

However, if the burglary is committed after the declaration of emergency within a county that is subject to a state of emergency declared by the Governor under chapter 252 and the perpetration of the burglary is facilitated by conditions arising from the emergency, the burglary is a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. As used in this subsection, the term "conditions arising from the emergency" means civil unrest, power outages, curfews, voluntary or mandatory evacuations, or a reduction in the presence of or the response time for first responders or homeland security personnel. A person arrested for committing a burglary within a county that is subject to such a state of emergency may not be released until the person appears before a committing magistrate at a first-appearance hearing. For purposes of sentencing under chapter 921, a felony offense that is reclassified under this subsection is ranked one level above

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the ranking under s. 921.0022 or s. 921.0023 of the offense committed.

(4) Burglary is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if, in the course of committing the offense, the offender does not make an assault or battery and is not and does not become armed with a dangerous weapon or explosive, and the offender enters or remains in a:

(a) Structure, and there is not another person in the structure at the time the offender enters or remains; or

(b) Conveyance, and there is not another person in the conveyance at the time the offender enters or remains.

However, if the burglary is committed after the declaration of emergency within a county that is subject to a state of emergency declared by the Governor under chapter 252 and the perpetration of the burglary is facilitated by conditions arising from the emergency, the burglary is a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. As used in this subsection, the term "conditions arising from the emergency" means civil unrest, power outages, curfews, voluntary or mandatory evacuations, ~~4b1~~ a reduction in the presence of or the response time for first responders or homeland security personnel. A person arrested for committing a burglary within a county that is subject to such a state of emergency may not be released until the person appears before a committing magistrate at a first-appearance hearing. For purposes of sentencing under chapter 921, a felony offense that

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is reclassified under this subsection is ranked one level above the ranking under s. 921.0022 or s. 921.0023 of the offense committed.

Section 2. Paragraphs (b) and (c) of subsection (2) of section 812.014, Florida Statutes, are amended to read:

812.014 Theft.--

(2)

(b)1. If the property stolen is valued at \$20,000 or more, but less than \$100,000;

2. The property stolen is cargo valued at less than \$50,000 that has entered the stream of interstate or intrastate commerce from the shipper's loading platform to the consignee's receiving dock; or

3. The property stolen is emergency medical equipment, valued at \$300 or more, that is taken from a facility licensed under chapter 395 or from an aircraft or vehicle permitted under chapter 401,

the offender commits grand theft in the second degree, punishable as a felony of the second degree, as provided in s. 775.082, s. 775.083, or s. 775.084. Emergency medical equipment means mechanical or electronic apparatus used to provide emergency services and care as defined in s. 395.002(10) or to treat medical emergencies. However, if the property is stolen within a county that is subject to a state of emergency declared by the Governor under chapter 252, the theft is committed after the declaration of emergency, and the perpetration of the theft is facilitated by conditions arising from the emergency, the

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113 theft is a felony of the first degree, punishable as provided in
 114 s. 775.082, s. 775.083, or s. 775.084. As used in this
 115 paragraph, the term "conditions arising from the emergency"
 116 means civil unrest, power outages, curfews, voluntary or
 117 mandatory evacuations, or a reduction in the presence of or the
 118 response time for first responders or homeland security
 119 personnel. For purposes of sentencing under chapter 921, a
 120 felony offense that is reclassified under this paragraph is
 121 ranked one level above the ranking under s. 921.0022 or s.
 122 921.0023 of the offense committed.

123 (c) It is grand theft of the third degree and a felony of
 124 the third degree, punishable as provided in s. 775.082, s.
 125 775.083, or s. 775.084, if the property stolen is:

- 126 1. Valued at \$300 or more, but less than \$5,000.
- 127 2. Valued at \$5,000 or more, but less than \$10,000.
- 128 3. Valued at \$10,000 or more, but less than \$20,000.
- 129 4. A will, codicil, or other testamentary instrument.
- 130 5. A firearm.
- 131 6. A motor vehicle, except as provided in paragraph

132 (2)(a).

133 7. Any commercially farmed animal, including any animal of
 134 the equine, bovine, or swine class, or other grazing animal, and
 135 including aquaculture species raised at a certified aquaculture
 136 facility. If the property stolen is aquaculture species raised
 137 at a certified aquaculture facility, then a \$10,000 fine shall
 138 be imposed.

139 8. Any fire extinguisher.

140 9. Any amount of citrus fruit consisting of 2,000 or more

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individual pieces of fruit.

10. Taken from a designated construction site identified by the posting of a sign as provided for in s. 810.09(2)(d).

11. Any stop sign.

12. Anhydrous ammonia.

However, if the property is stolen within a county that is subject to a state of emergency declared by the Governor under chapter 252, the theft is committed after the declaration of emergency, and the perpetration of the theft is facilitated by conditions arising from the emergency, the offender commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the property is valued at \$5,000 or more, but less than \$10,000, as provided under subparagraph 2., or if the property is valued at \$10,000 or more, but less than \$20,000, as provided under subparagraph 3. As used in this paragraph, the term "conditions arising from the emergency" means civil unrest, power outages, curfews, voluntary or mandatory evacuations, or a reduction in the presence of or the response time for first responders or homeland security personnel. For purposes of sentencing under chapter 921, a felony offense that is reclassified under this paragraph is ranked one level above the ranking under s. 921.0022 or s. 921.0023 of the offense committed.

Section 3. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 911

Department of Management Services

SPONSOR(S): Bullard

TIED BILLS:

IDEN./SIM. BILLS: SB 678

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Domestic Security Committee		Wiggins <i>JW</i>	Newton <i>ST</i>
2) State Administration Appropriations Committee			
3) Governmental Operations Committee			
4) State Administration Council			
5) _____			

SUMMARY ANALYSIS

The bill provides for the Department of Management Services to maintain a list of unoccupied buildings that are owned by the state or others that can be utilized as shelters in an emergency or disaster. The list must be updated by May 31st of each year.

The bill is amending a F.S. but does not specify its section location.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Maintain Public Security-The list of unoccupied buildings that can be utilized as shelters will be updated every year by May 31st so all of the counties and municipalities will know what buildings may be used as shelters to safeguard Florida residents in an emergency.

B. EFFECT OF PROPOSED CHANGES:

Current Situation:

Pursuant to the "Capital Facilities Planning and Budgeting Act" of sections 216.015-216.016, F.S., the Department of Management Services (DMS) is required to take inventory of current facilities owned, leased, rented, or otherwise occupied by any agency of the state or judicial branch.¹ To fully comply with this requirement, DMS produces an annual report. This report is available online.² Facilities not incorporated in this report include those of the State Board of Administration, Board of Regents, the Community College System, Water Management Districts, local school districts, private correctional facilities and any facilities with less than three thousand square feet in gross area.³ There are several components to the annual inventory. One, the State Facility Inventory program, includes facility ownership, management responsibility, date assessed, assessor, location, occupancy, size, and other general data. Another component, the Lease Inventory Program, consists of a recording of *all* state leases and those facilities ownership, square footages, costs, beginning and ending dates, and other general data for these leases.

DMS, pursuant to s. 252.385(4) (b) and (c), F.S., is required to incorporate provisions into state agency lease agreements for the use of suitable leased public facilities as public hurricane evacuation shelters. The DMS is also required to consult with local and state emergency management agencies to assess DMS facilities and identify the extent to which each facility has public hurricane evacuation shelter space. The DMS asserts that there are currently no known leased facilities qualifying under the criteria established in this statute as emergency shelters or as unoccupied space.⁴

The Department of Community Affairs, Division of Emergency Management ("Division"), must prepare a state comprehensive emergency management plan that can be integrated into and coordinated with the emergency management plans and programs of the Federal Government as required in the "State Emergency Management Act" of sections 252.31-252.60, F.S.⁵ The plan must include a shelter component with specific planning provisions and promote shelter activity coordination between the public, private, and nonprofit sectors. This component must include strategies to ensure adequate public shelter space is available in each region of the state; establish strategies for refuge-of-last-resort programs; include plans to assist local emergency management efforts to ensure that adequate staffing plans exist for all shelters, including medical and security personnel; provide for a post disaster communications system for public shelters; establish model shelter guidelines for operations, registration, inventory, power generation capability, information management, and staffing; and set forth

¹ Section 216.015(3) (b), F.S.

² <http://fcn.state.fl.us/dms/dbc/mgt/inventory.html>

³ According to the Executive Summary of the 2005 Inventory Annual Report

⁴ Suitable leased public facilities include leased public facilities that are solely occupied by state agencies and have at least 2,000 square feet or net floor area in a single room or in a combination of rooms having a minimum of 400 square feet in each room. Section 252.385 (4) (b), F.S.

⁵ Section 252.35 (2) (a), F.S.

policy guidance for sheltering people with special needs. ⁶The Division has integrated the State Comprehensive Emergency Management Plan (February 1, 2004 Edition) by citation into its rules. The plan includes, in Appendix VI, the coordination of activities involved with the emergency provision of temporary shelters.⁷

The Division currently manages a program for surveying existing public and private, with written owner agreement, buildings to identify which are appropriately designed and located to serve as shelters.⁸ Public facilities, including schools, postsecondary education facilities, and other facilities owned or leased by the state or local governments, but excluding hospitals or nursing homes, which are suitable for use as public hurricane evacuation shelters must be made available at the request of the local emergency management agencies.⁹

Proposed situation:

The bill provides that the DMS must compile a list of unoccupied buildings owned by the state or others which are available for use as emergency shelters during an emergency or other catastrophic event. The list must be organized by county and municipality and must be updated by May 31 of each year.

C. SECTION DIRECTORY:

Section 1. Requires the Department of Management Services to maintain a list of unoccupied buildings to be used as emergency shelters during storms or other catastrophic events.

Section 2. This act shall take effect July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

The responsibility of generating and maintaining a list of unoccupied buildings in this state may result in additional staff costs and expanded job duties. The additional cost to DMS to implement this program is unknown.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

⁶ Section 252.35 (2) (a)2., F.S.

⁷ Rule 9G-2.002, F.A.C.

⁸ Section 252.385(2), F.S.

⁹ Section 252.385(4)(a), F.S.

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenue in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

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1 A bill to be entitled
2 An act relating to the Department of Management Services;
3 requiring the department to maintain a list of unoccupied
4 buildings that are available to be used as emergency
5 shelters; providing an effective date.

6
7 Be It Enacted by the Legislature of the State of Florida:

8
9 Section 1. The Department of Management Services shall
10 compile a list of unoccupied buildings owned by the state or
11 others which are available for use as emergency shelters during
12 storms or other catastrophic events. The list shall be organized
13 by county and municipality and shall be updated by May 31 of
14 each year.

15 Section 2. This act shall take effect July 1, 2006.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **HB 911**

COUNCIL/COMMITTEE ACTION

ADOPTED	___ (Y/N)
ADOPTED AS AMENDED	___ (Y/N)
ADOPTED W/O OBJECTION	___ (Y/N)
FAILED TO ADOPT	___ (Y/N)
WITHDRAWN	___ (Y/N)
OTHER	_____

Council/Committee hearing bill: Domestic Security

Representative(s) Bullard offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Paragraph (a) of subsection (4) of section 252.385, Florida Statutes is amended, and paragraph (d) is added to that subsection, to read:

252.385 Public shelter space.--

(4)(a) Public facilities, including schools, postsecondary education facilities, and other facilities owned or leased by the state or local governments, but excluding hospitals or nursing homes, which are suitable for use as public hurricane evacuation shelters shall be made available at the request of the local emergency management agencies. Such agencies shall coordinate with the appropriate school board, university, community college, state agency, or local governing board when requesting the use of such facilities as public hurricane evacuation shelters.

(d) The Department of Management Services shall include in the annual state facilities inventory report required under ss.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

216.015-216.016 a separate list of state-owned facilities, including, but not limited to, meeting halls, auditoriums, conference centers, and training centers that have unoccupied space suitable for use as an emergency shelter during a storm or other catastrophic event. Facilities must be listed by the county and municipality where the facility is located and must be made available in accordance with paragraph (a). As used in this paragraph, the term "suitable for use as an emergency shelter" means meeting the standards set by the American Red Cross for a hurricane evacuation shelter, and the term "unoccupied" means vacant due to suspended operation or nonuse. The list must be updated by May 31 of each year.

Section 2. This act shall take effect July 1, 2006.

===== T I T L E A M E N D M E N T =====

Remove the entire title and insert:

An act relating to the use of state facilities as emergency shelters; amending s. 252.385, F.S.; providing for use of certain state facilities as emergency shelters; directing the Department of Management Services to list state-owned facilities that are suitable for use as emergency shelters; providing an effective date.